



INTERIOR BOARD OF INDIAN APPEALS

Unique Oil, Inc. v. Muskogee Area Director, Bureau of Indian Affairs

21 IBIA 186 (02/12/1992)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

UNIQUE OIL, INC.,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 92-62-A
MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	February 12, 1992

Appellant Unique Oil, Inc., sought review of an October 21, 1991, notice of additional royalty assessment under an Osage oil and gas lease. The notice was issued by the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA). Appellant's notice of appeal was received by the Board on November 6, 1991.

The Area Director issued more than 500 letters assessing additional royalties under Osage oil and gas leases on October 21, 1991. The same legal issue is raised under each assessment. The Board has received a substantial number of appeals from the Area Director's assessment letters.

On November 21, 1991, the Board received a group appeal from more than 200 persons who had retained the same attorney, Douglas Wilson, Esq., to represent them in appealing from notices of additional royalty assessments. This appeal has been docketed as Melvin E. Acott, et al. v. Muskogee Area Director, Docket No. IBIA 92-95-A.

After receiving Acott and Wilson's client list, the Board compared Wilson's clients with the persons who had filed individual appeals. Appellant was not listed as a participant in Acott. By order dated December 17, 1991, the Board dismissed four appeals that had been filed by persons who later decided to participate in the Acott appeal. Benton Oil and Gas Co. v. Muskogee Area Director, 21 IBIA 86 (1991).

On January 27, 1992, the Board received a report from the Area Director that was intended to reconcile the records of the Osage Agency, BIA, with those of the Board. Among other things, the report indicated that appellant was not a lease holder, and that the lease was actually held by Doug Smith, who was a participant in Acott. On January 30, 1992, the Board issued an order which stated:

Appellant is requested to clarify whether these two appeals concern the same lease and lessee, and, if so, whether it wishes to pursue its appeal independently or through the group appeal in Acott. If the two appeals do concern the same lease and lessee,

and appellant wishes to pursue its appeal through Acott, the present appeal will be dismissed without prejudice to appellant's pursuing the matter through Acott.

On February 10, 1992, the Board received an entry of appearance for appellant by Wilson, who stated that appellant and Doug Smith were appealing from a decision concerning the same lease. Wilson requested an order nunc pro tunc, which would include appellant in a November 13, 1991, Board order concerning procedures, and a November 20, 1991, order docketing and dismissing 13 other appeals that had been filed by individuals who later decided to join in Acott. The dismissal was without prejudice to participating in Acott. See Nadel and Gussman v. Muskogee Area Director, 21 IBIA 68 (1991).

Appellant's motion is granted. Appellant will be covered by the procedures established in the Board's November 13, 1991, order. Its individual appeal will be dismissed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Muskogee Area Director's October 21, 1991, decision assessing additional royalties is dismissed. This order does not affect the status of Doug Smith as an appellant in Melvin E. Acott, et al. v. Muskogee Area Director, Docket No. IBIA 92-95-A.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge